IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

LETTERS PATENT APPEAL NO. 9 OF 2002
IN
WRIT PETITION NO. 3491 OF 2001

Vijay Manmathappa Jangave
Age : 43 Years, Occ. Nil,
R/o. Latur, Tq. & District
Latur. ..**APPELLANT**
(Orig. Respondent)

VERSUS

Zilla Parishad, Latur
Through its Chief Executive
Officer at Dist. Latur ..**RESPONDENT**
(Orig. Petitioner)

...

Advocates for the Appellant : Mr. S. K. Kulkarni, Mr. M.D.Giri
Mr. P.M. Nagargoje
Advocate for the respondent : Mr. V.D. Hon.

...

CORAM :T.V. NALAWADE AND
SUNIL K. KOTWAL ,JJ.
DATE : 16th JANUARY, 2019

JUDGMENT(PER T.V. NALWADE, J] :-

This appeal is filed to challenge the order of termination of the present appellant passed by the respondent employer and also the decision given by the learned Single Judge of this Bench in Writ Petition No. 3491 of 2001, which was filed to challenge the order of termination.

2. Both the sides are heard.

3. The appellant was appointed as a Clerk in the Education Department of the respondent Zilla Parishad in the year 1986. A criminal case was filed against him for the offences punishable under

Sections 306 and 498-A of the Indian Penal Code and some provisions of the Dowry Prohibition Act. The said case came to be decided in the year 1989. He came to be convicted for the offence punishable under Section 498-A of the Indian Penal Code and he was sentenced with imprisonment of three years. This decision was challenged by him but his appeal came to be dismissed in the year 1995. He surrendered to his bail bonds for undergoing sentence and from 15.09.1995 to 31.08.1997, he was kept in the jail.

4. On 23.03.1996, the appellant came to be suspended under Rule 3(1) of the Maharashtra Zilla Parishad District Services (Discipline and Appeal) Rules, 1964, as copy of decision delivered by the High Court in Criminal Appeal filed by the present appellant was received by the employer. On the basis of the judgment itself, the termination order came to be passed on 16.08.1996.

5. It is the case of the appellant that from jail he made correspondence with the employer and he requested not to take action against him, but the action was taken and so after releasing from the jail, he filed complaint before the Labour Court. The Labour Court allowed the proceedings and set-aside the order of termination by observing that proper procedure was not followed and copy of termination order was not served on the present appellant.

6. The aforesaid decision of the Labour Court was directly challenged in the Writ Petition No. 3491 of 2001 by the employer. The learned Single Judge has observed that if there was some grievance against the order then it was open to the present appellant employee to approach to the Superior Officer by filing Administrative Appeal as provided under Rules 13 and 14 of the aforesaid Rules of 1964 and as that procedure was not followed, the Labour Court could not have entertained the complaint. In view of these circumstances and due to other circumstances, which give inference that the order of termination was served, the learned Single Judge allowed the Writ Petition.

7. In the present proceeding, to substantiate the contention that the appellant had made correspondence with the employer, two copies of communication are produced on record, but they are dated 11.02.1997 and 21.02.1997. The order of termination came to be passed on 16.08.1996 and so it can be said that if at all some correspondence was made, that was made after the order of termination was made against the present appellant. Copy of order of termination passed by the authority is produced and the said copy shows that in the order itself, it was directed to supply copy to the concerned i.e. to the present appellant. The circumstances that after passing of the termination order, the aforesaid correspondence was made is sufficient to infer that the order was sent at least to the residential place of the appellant by the

employer and from there, the appellant learnt about the order. In any case, it is not the contention of the appellant that he had informed the department that the criminal case was filed against him. He must have been arrested in the said case and he must have been kept behind the bars for some period. At least after the decision of the case, it was necessary for him to inform the department that he was convicted, but that was not done. These circumstances need to be considered against the present appellant. The other circumstances that administrative appeal was available, but he did not file administrative appeal, also needs to be considered as in that appeal, the department could have considered and quoted the aforesaid record.

8. Reliance was placed by the learned counsel for the appellant on the case reported as ***AIR 1985 Supreme Court Page 1416 (Union of India and another Vs. Tulsiram Patel and others decided with other matters***). In this case, the Apex Court has considered Articles 310 and 311 of the Constitution of India and it is laid down that satisfaction of the disciplinary authority is necessary for passing order under Article 311 (2) of the Constitution of India and even if major penalties are to be imposed in such cases, then there is no need to give hearing to the employee before passing order of major penalties.

9. The submission made by the learned counsel for the appellant that some minor penalty could have been given also cannot be

considered in view of aforesaid circumstances and particularly the procedure provided to challenge the order made by the disciplinary authority. The order shows that it is passed only on the basis of order of conviction and sentence given against the appellant on 11.08.1995. Due to all these circumstances, this Court holds that it is not possible to interfere in the order made by the learned Single Judge of this Court. In the result, the appeal stands dismissed.

[SUNIL K. KOTWAL]
JUDGE

[T.V. NALAWADE]
JUDGE

YSK/